

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner (“Commissioner”) proposes to amend and adopt regulations under the Franchise Investment Law (“FIL”) relating to negotiated franchises, exemptions to registration, and electronic disclosure documents. The Commissioner proposes to adopt Sections 310.100.4 and 310.114.4 and to amend Section 310.101 of Subchapter 2.6 of Chapter 3 of Title 10 of the California Code of Regulations. (10 C.C.R. Sections 310.100.4, 310.101, and 310.114.4.)

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department of Corporations’ (“Department”) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on February 7, 2005. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax (916) 322-3205. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5:00 p.m. on the next business day.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department regulates the offer and sale of franchises pursuant to the FIL. Under the FIL, it is unlawful to offer or sell a franchise unless the franchise is registered by the Department, or is exempt from the Department’s review.

On September 10, 2004, Governor Arnold Schwarzenegger signed AB 2921 (Chap. 458, Stats, 2004), which made several important changes to the FIL. The Department proposes changes to the Commissioner’s rules in accordance with AB 2921 as follows: (1) Section 310.100.4 will specify the content of the disclosure provided to the franchisee that is to be used for certain offers and sales of franchises on terms different from the terms of the registered offer, as specified in Corporations Code Section 31109.1; (2) Section 310.101 will modify the existing exemption form to allow for an exemption for the offer or sale of a franchise to certain accredited and suitable purchasers, as set forth in Corporations Code section 31109; and (3) Section 310.114.4 will specify the requirements to be used when a franchisor delivers a franchise disclosure document by electronic means, as set forth in Section 31119, as amended.

AUTHORITY

Section 31502, Corporations Code.

REFERENCE

Sections 31101, 31104, 31108, 31109, 31109.1, 31114, 31119, 31500, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 24/04-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 24/04-C. These documents are also available at the Department's website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect costs or savings in federal funding to the state: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within

the State of California; or (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations will not affect small business. This regulatory action merely streamlines the registration process, by providing exemptions from registration and allowing for delivery of disclosure documents by electronic means.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Kimberly Willy, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814, (916) 322-3553.

Dated: December 14, 2004
Sacramento, California

TIMOTHY L. Le BAS
Deputy Commissioner and General Counsel
Office of Law and Legislation